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## TERMS OF SERVICE

**These Terms should be read in conjunction with Marketplace Genie's Online Terms & Conditions.**

### 1. INTERPRETATION

In this Agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:

- 1.1. an expression which denotes any gender includes the other gender; a person includes a natural and an artificial or juristic person; the singular includes the plural and vice versa;
- 1.2. the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

<b>"3<sup>rd</sup> Party Client"</b>	any client of a Customer to whom the Customer provides integration services using the System and with whom Marketplace Genie has no contractual or other relationship by virtue of them not being a Party to the Agreement
<b>"Agreement"</b>	this document, together with all of its Schedules, as amended from time to time upon reasonable notice to the Customer
<b>"Billing Cycle"</b>	the monthly cycle on which a Customer's invoices are calculated, beginning on Commencement Date
<b>"Business Days"</b>	any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa
<b>"Commencement Date"</b>	the date on which the Customer signs up for the Trial in order to make use of the System and the Services
<b>"Consumer Protection Act"</b>	the Consumer Protection Act 68 of 2008, as amended from time to time
<b>"Customer, Merchants", "you" or "yours"</b>	any person making use of the System and related Services to provide business automation services, whether under the Trial or Paid Subscription
<b>"Electronic Communications and Transactions Act"</b>	the Electronic Communications and Transactions Act 25 of 2002, as amended from time to time
<b>"Intellectual Property Rights"</b>	intellectual property of all kinds and descriptions, together with all rights subsisting therein, whether statutory or at common law, including all Proprietary Information, all copyrighted works, trade marks (whether registered or not), designs (whether registered or not), inventions (whether patented or not), software programs, procedures, methodologies, data and flow charts and all statutory registrations and

applications therefor as at the Commencement Date, together with all improvements, developments and customisations of the a foregoing

<b>“Licence Fee”</b>	amounts payable by the Customer to Marketplace Genie as indicated on invoices
<b>“Paid Subscription”</b>	use of the System as from the date of expiry of the Trial
<b>“Parties”</b>	Marketplace Genie and the Customer. “Party” shall mean either one of them, as the context may indicate and “We” or “Us”, as used in the abridged terms, denotes Marketplace Genie (Pty) Ltd t/a Marketplace Genie
<b>“Protection of Personal Information Act”</b>	the Protection of Personal Information Act 4 of 2013, as amended from time to time
<b>“Promotion of Access to Information Act”</b>	the Promotion of Access to Information Act 2 of 2000, as amended from time to time
<b>“Proprietary Information”</b>	any and all know how, trade secrets and data/information of a proprietary and/or confidential nature, including data/information of a Party that the other Party should reasonably have known to be proprietary or confidential in nature
<b>“Services”</b>	the services to be provided by Marketplace Genie to the Customer in terms of this Agreement consisting of, inter alia, any support services required by the Customer in relation to the System
<b>“System”</b>	the Marketplace Genie online business automation system created and developed by or under the control of Marketplace Genie exclusively, or by or under the control of Marketplace Genie in conjunction with a third party, inclusive of all modifications, enhancements, updates and additions thereto
<b>“Trial”</b>	use of the system at no charge, for the first thirty (30) days after the Commencement Date
<b>“Our Website” or “our Site”</b>	<a href="http://www.marketplacegenie.co.za">www.marketplacegenie.co.za</a>
<b>“VAT”</b>	value added tax levied in terms of the Value Added Tax Act, 89 of 1991, as amended

- 1.3. any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Commencement Date, and as amended or substituted from time to time;
- 1.4. if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.5. where any term is defined within a particular clause other than this clause 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement; any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be.

## 2. INTRODUCTION

- 2.1. Marketplace Genie has created and developed the System and are the supplier of and have expertise in providing the Services. [www.marketplacegenie.co.za](http://www.marketplacegenie.co.za) is a multi-channel, feed management platform operated by Marketplace Genie (Pty) Ltd, registration number: 2017/536680/07. Our Site enables all retailers and merchants to upload, manage and distribute their product data to various platforms and audiences.
- 2.2. The Customer requires Marketplace Genie to, and Marketplace Genie is willing to grant the Customer access to the System and to provide the Services to the Customer in accordance with the terms and conditions set out in this Agreement.
- 2.3. This Marketplace Genie Terms of Service Agreement, as amended from time to time, (including the Privacy Policy and other policies or documents incorporated herein by reference) ("this Agreement") applies to all the services provided by us to you from time to time (collectively, the "Services"). Before you register to become a Merchant, you must read, agree with, and accept all of the terms and conditions contained in this Agreement. If you do not agree with all the provisions of this Agreement, you may not register for a Merchant Account and/or use the Services.

## 3. MERCHANT ELIGIBILITY

- 3.1. In order to use any of the Services and become a Merchant, you must lawfully market and/or sell your own products and/or services ("Products") via an online store ("Online Merchant Site") and/or bricks and mortar store ("Merchant Store") which you own and operate.
- 3.2. In order to use any of the Services you must register for an account ("Account") which enables you to access the Marketplace Genie platform within our Website ("Platform") via which you can access the Services.
- 3.3. Note that we are not obliged to accept your registration application and reserve the right not to enter into this Agreement with you as we may reasonably deem fit. (Reasons for any such refusal could include for example that you have previously been suspended from our Services or you pose an unacceptable level of risk for Marketplace Genie.)

## 4. COMMENCEMENT & DURATION

- 4.1. This Agreement shall commence on the Commencement Date and shall continue in force until terminated by either Party with reasonable notice.
- 4.2. The Customer may terminate the Agreement on reasonable notice, provided that any outstanding Monthly Fees are paid prior to termination.
- 4.3. Marketplace Genie may terminate the Agreement on reasonable notice and on grounds that Marketplace Genie believe to be reasonable, where after the Customer will have access to their data for a period of three (3) months.
- 4.4. Reasonable notice to be at least 1 calendar month.
- 4.5. You acknowledge that you will remain bound by this Agreement as long as you use any of the Services. This Agreement will terminate automatically and simultaneously with the termination for any reason of the Services provided to you by us.
- 4.6. The expiration or termination of this Agreement shall not affect such of the provisions of the Agreement as expressly provide that they will operate after any such expiration or

termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## 5. ACCESS TO THE SYSTEM

- 5.1. For the duration of this Agreement, Marketplace Genie grants to the Customer a personal, non-transferable and non-exclusive right and license to access and make of the System.
- 5.2. It is recorded that the System is proprietary to Marketplace Genie and that, as such, the Customer shall not be entitled to:
  - 5.2.1. reproduce, publish, broadcast, translate, modify, adapt, decompile, disassemble or reverse engineer the System, as the case may be, or any concepts, methods and designs embedded in the System, or any part thereof; or
  - 5.2.2. merge or combine the whole or any part of the System with any other components, elements or software without the prior written consent of Marketplace Genie; or
  - 5.2.3. sell, lend, hire or transfer or make available the Use of any part of the System to any third party.
- 5.3. The System is to be accessed remotely therefore:
  - 5.3.1. the Customer shall be responsible for accessing the System via the internet or another dedicated connection; and
  - 5.3.2. the Customer shall be responsible for any and all costs associated with accessing the System.
- 5.4. It is expressly recorded that the Customer is at all times responsible for ensuring that it:
  - 5.4.1. possesses or will possess all software and hardware required to access and/or utilise the System; and
  - 5.4.2. complies with any laws and/or regulations related to its access and/or Use of the System.
- 5.5. Marketplace Genie will at all times use reasonable endeavours to ensure that the access to the System is continuous. In this regard, however, it is specifically recorded that Marketplace Genie cannot and does not guarantee that access to the System will remain uninterrupted at all times.
- 5.6. Marketplace Genie shall provide the Customer with reasonable notice of any scheduled maintenance that may interrupt access to the System, and shall, whenever possible, schedule such maintenance at times which are most convenient for the Customer.

## 6. THE SERVICES

- 6.1. Uploading of your product data: You will supply us with details of all the Products marketed ("Product Data") or offered for sale by you on your Merchant Site and/or Merchant Store via an xml feed or direct API integration having the specification determined by us from time to time ("Feed"). Such Feed must either be dynamically generated (typical of a normal server-side script) or if static, be generated on a daily basis.
- 6.2. Management of your product data: The Platform allows you to modify and enhance your product listings for the export and distribution to your desired Channels. We will endeavour to provide a service whereby we provide recommendations for good quality product data when it becomes available to us.
- 6.3. Distribution of your product data to channels: We will provide you with the means and services to easily disseminate your product data to your desired channels.
- 6.4. Data analytics & tracking: Marketplace Genie can track and monitor your click/referral, sale/order, conversion and ROI stats and data and report it to you.
- 6.5. Integration plug-ins for 3rd party accounting, shipping and e-commerce plugins.

## 7. PROVISION OF THE SERVICES

- 7.1. Marketplace Genie undertakes to provide telephonic and email customer support to the Customer, between the hours of 9 am and 5 pm on Business Days.

- 7.1.1. Marketplace Genie reserves the right to refuse to provide Services to any 3rd Party client or other unrelated party
- 7.2. Marketplace Genie will at all times use its reasonable endeavours to ensure that the supply of the Services is continuous. In this regard, however, it is specifically recorded that Marketplace Genie cannot and does not guarantee that the supply of the Services will remain uninterrupted at all times.
- 7.3. In the event of any Services being interrupted during a critical period, Marketplace Genie shall, upon written request by the Customer, use all reasonable endeavours to make alternative facilities available to the Customer.
- 7.4. Marketplace Genie shall provide the Customer with reasonable notice of any scheduled maintenance that may interrupt the provision of any Services, and shall, whenever possible, schedule such maintenance at times which are most convenient for the Customer.
- 7.5. Marketplace Genie relies on the integration with 3rd party platforms and cannot be held responsible for interruptions on those such platforms.

## 8. CONSIDERATION AND PAYMENT

- 8.1. The Customer shall pay to Marketplace Genie a license fee, payable either:
  - 8.1.1. monthly; or
  - 8.1.2. annually in advance, in which case the Customer is entitled to a ten percent (10%) discount.
- 8.2. License Fees are calculated in accordance with the Customer's Billing Cycle
- 8.3. Payment must be made by You by providing either a valid credit card. This is currently the only accepted form of payment.
- 8.4. License Fees shall escalate annually, on 1 January, with one (1) month's notice to the Customer at either:
  - 8.4.1. the annual inflation rate as determined by the Consumer Price Index for the preceding calendar year; or
  - 8.4.2. 12% (twelve percent)
- 8.5. Notwithstanding the above, Marketplace Genie reserves the right to escalate Licence Fees at other times and at other percentages upon furnishing the Customer with six (6) months' notice of such increase
- 8.6. Marketplace Genie shall, for the duration of this Agreement, furnish the Customer with a written invoice setting out:
  - 8.6.1. the amount of the License Fee due by the Customer to Marketplace Genie in terms of clause 8.1.1 or 8.1.2, which amounts shall be invoiced by Marketplace Genie and payable by the Customer as set out in clause 8.7.2 below; and
  - 8.6.2. any administration fee due by the Customer to Marketplace Genie resulting from manual processing of payments, which amount shall be invoiced by Marketplace Genie and payable by the Customer as set out in clause 8.7.2 below
  - 8.6.3. the net amount due and payable by the Customer to Marketplace Genie in respect of each invoice.
- 8.7. Unless otherwise clearly stipulated in a Schedule, all amounts stipulated as being payable by the Customer to Marketplace Genie in terms of this Agreement:
  - 8.7.1. are exclusive of VAT; and
  - 8.7.2. shall be payable by the Customer to Marketplace Genie immediately upon receiving an invoice from Marketplace Genie failing which the account will be frozen.
- 8.8. The Customer shall not, under any circumstances, be entitled to withhold payment of any amount due under this Agreement, save for as provided for in clause 8.7.2. In the event that the Customer fails to make due and timeous payment of any amount owing to Marketplace Genie under this Agreement:
  - 8.8.1. Marketplace Genie shall be entitled to suspend access to the System and the provision of the Services, until such time as the Customer shall have paid to Marketplace Genie such fees, it being specifically recorded that in the event that

payment of any amount is to be made in advance, Marketplace Genie shall not be obliged to grant access to the System and/or commence with the provision of the Services, until such payment has been made by the Customer in full

- 8.9. Where the Customer requests that Marketplace Genie undertake ad hoc development work, and such work is for the sole benefit of the Customer, Marketplace Genie reserves the right to charge a reasonable fee, subject to prior consultation with, and agreement by, the Customer
- 8.10. Where the Customer makes use of Marketplace Genie's Self-Service document upload feature, Marketplace Genie reserves the right to charge a reasonable fee for storage of large amounts of data due to excessive uploading of documents.
- 8.11. Marketplace Genie reserves the right to charge a reasonable administrative fee for administrative tasks outside the scope of its regular Services, including additional costs that it may incur in providing the Services and pass along to You. These include, but are not limited to, customer service issues that cannot be handled over email but require personal service, fees incurred by third parties You have elected to use as payment methods, and disputes that require legal services. These charges will be billed to the Payment Method we have on file for You. You may change Your Payment Method at any time by logging into Your account. You agree that You are solely liable for arranging that Your Services are renewed, and that Marketplace Genie shall not be liable to You or any third party if it is unable to charge Your Payment Method in order to renew Your Services.
- 8.12. If for any reason Marketplace Genie is unable to charge Your Payment Method for the full amount owed Marketplace Genie for the Services provided, or if Marketplace Genie is charged a penalty for any fee it previously charged to Your Payment Method, or if Marketplace Genie is charged back for any fee it previously charged to the credit card You provided, You agree that Marketplace Genie may pursue all available remedies in order to obtain payment. You agree that among the remedies Marketplace Genie may pursue in order to effect payment, shall include but will not be limited to, immediate cancellation without notice to You of any Services registered or renewed on Your behalf.
- 8.13. Billing Complaints: You may direct any billing or account complaint to us at <http://www.MarketplaceGenie.co.za/contact/>.

## 9. EXCUSED PERFORMANCE

- 9.1. Marketplace Genie shall be relieved of the obligation to perform in accordance with the provisions of this Agreement and shall, in addition, not be liable for any loss (including but not limited to loss of data, profits and goodwill), liability, damages (whether direct, indirect or consequential) or expense of whatsoever nature and howsoever arising, where Marketplace Genie's failure, delay or inability to perform its obligations in terms of this Agreement is due to:
  - 9.1.1. the Customer's failure to perform, or delay in performing its obligations in terms of this Agreement;
  - 9.1.2. the Customer's failure to confirm the accuracy and integrity of any data or information processed for and on behalf of it by Marketplace Genie;
  - 9.1.3. circumstances beyond Marketplace Genie's reasonable control or events that constitute an event of force majeure in terms of clause 23;
  - 9.1.4. all telecommunications infrastructure and communication line faults;
  - 9.1.5. power failure or power interruptions;
  - 9.1.6. failure or unreasonable delay by the Customer to report faults, problems or defects in the quality of the System to Marketplace Genie;
  - 9.1.7. the Customer making changes to its information technology system or environment or any portion thereof;
  - 9.1.8. the failure of any hardware, software programme, applications/s or any other computer systems (or any component thereof) of any third party on whom the Customer relies (whether directly or indirectly) to access and utilise the System



- and/or the Service, and/or on which Marketplace Genie relies to provide access to the System or to provide the Services;
- 9.1.9. loss or damage caused directly or indirectly by the negligent and/or incorrect Use of the System by the Customer; and/or
- 9.1.10. the suspension of the Services for maintenance, repair and improvements; provided that, where possible, Marketplace Genie shall provide the Customer with reasonable notice of any such suspension.

## 10. OBLIGATIONS OF THE CUSTOMER

- 10.1. The Customer shall, for the duration of this Agreement:
- 10.1.1. be solely responsible for confirming the accuracy and integrity of any data or information processed for and on behalf of it by Marketplace Genie;
- 10.1.2. be solely responsible for the protection of its Proprietary Information;
- 10.1.3. not commit or attempt to commit any act or omission which directly or indirectly:
- 10.1.3.1. impedes, impairs or precludes Marketplace Genie from being able to grant access to the System and/or provide the Services in a reasonable and business-like manner;
- 10.1.3.2. constitutes an abuse
- 10.1.3.3. or malicious misuse of the System and/or the Services; or
- 10.1.3.4. is calculated to have either of the abovementioned effects, and in the event of the Customer committing any act or omission listed in 10.1.3, should Marketplace Genie incur expenses to remedy the situation, Marketplace Genie reserves the right to charge the Customer the amount necessary to cover Marketplace Genie's additional expenditure or to take any other appropriate action it may deem necessary to remedy the situation;
- 10.1.4. not sell, resell or otherwise deal with the System in any manner whatsoever and, without limitation to the foregoing, any consideration which the Customer may receive whilst acting in breach of this prohibition shall be forfeited to Marketplace Genie;
- 10.1.5. not allow any person other than its employees or other authorised parties access to the System and/or the Services;
- 10.1.6. not withhold or defer payment or be entitled to a reduction in any charge or have any other right or remedy against Marketplace Genie, its servants, its agents or any other persons for whom it may be liable in law if Marketplace Genie interrupts access to the System or refrains from providing the Services to Customer in the event that the Customer is in default of any of its obligations under this Agreement to Marketplace Genie;
- 10.1.7. not at any time use the System and/or the Services in contravention of any South African law and, in this regard, the Customer acknowledges that Marketplace Genie has no obligation to assist the Customer in obtaining knowledge and/or clarity in terms of the applicable South African law; and
- 10.1.8. not make any warranty or representation in respect of the System and/or the Services other than those authorised in writing by Marketplace Genie.

## 11. SECURITY & RISKS

- 11.1. You are solely responsible for securing all data in your possession and/or under your control. It is your responsibility to, and you agree and warrant that you will keep your username and password secure and confidential at all times in that you will only use your username and password for your own personal use and will not disclose your username and password to any other persons or enable any other persons to otherwise access your Merchant Account. If you are a Legal Entity, you must further ensure that the persons authorised by you to access your Merchant Account do so within the scope of their authority and do not disclose



your username and password to any unauthorised person or enable any unauthorised person to otherwise access your Merchant Account.

- 11.2. Any person that delivers or attempts to deliver any damaging code to our Site or attempts to gain unauthorised access to any page on our Site shall be prosecuted and civil damages shall be claimed in the event that we suffer any damage or loss.
- 11.3. You allow us to take all reasonable steps to ensure the integrity and security of our Site and back-office applications.

## 12. CHANGES TO THIS AGREEMENT AND / OR THE SERVICES

- 12.1. We reserve the right to modify our Site or Services, in part or in whole, temporarily or permanently, or to launch new services or improvements, on prior notice posted on our Site.
- 12.2. This Agreement (including the Privacy Policy and other policies or documents referred to herein) may be changed from time to time upon reasonable notice to you. Upcoming material changes will be posted on the Site 30 days prior to their effective date. If you do not agree with any of the amendments made to this Agreement from time to time, you will be entitled to cancel the Agreement and the Services subscribed for by giving written notice to us to that effect.

## 13. WARRANTIES

### **The Customer warrants and represents that:**

- 13.1. the supply of the System and/or the rendering of the Services by Marketplace Genie in terms of this Agreement shall not give rise to:
  - 13.1.1. a breach of any licensing arrangement or agreement concerning the Customer's computer systems, including, without limitation, the Customer's software;
  - 13.1.2. or an infringement of any copyright or similar right held by any licensor/s of any of the Customer's computer systems and, in particular, the Customer's software.
- 13.2. If, in Marketplace Genie's opinion, the supply of the System and/or the rendering of any of the Services will constitute a breach of any license or the infringement of any copyright or similar right held by any person in respect of any of the Customer's computer systems and/or the Customer's computer software, Marketplace Genie shall not be obliged to supply the System and/or provide any such Services.

### **Marketplace Genie warrants and represents that:**

- 13.3. it has full capacity and authority and all the necessary licences, permits and consents to enter into and perform in terms of this Agreement and to provide access to the System and/or to provide the Services to the Customer;
- 13.4. it is the owner of or has the right to use under licence the Intellectual Property Rights employed by it during or as part of providing access to the System or supplying the Services;
- 13.5. it is not aware, as at date hereof, of any matter within its reasonable control which might or will adversely affect its ability to perform its contractual obligations under this Agreement;
- 13.6. access to the System shall be granted and the Services shall be provided in accordance with the provisions of this Agreement and in compliance with South African law; and the Services will be performed in a professional manner and that it is and/or it shall use personnel that is appropriately experienced, suitably qualified and has sufficient knowledge, expertise and competence to perform the services, in accordance with industry standards.
- 13.7. Save as expressly set out in clause 13.3 above, Marketplace Genie does not make any representations nor give any warranties or guarantees of any nature whatsoever in respect of the System and/or the Services and all warranties which are implied or residual at common law are hereby expressly excluded.

## 14. LIMITATION OF LIABILITY

- 14.1. Marketplace Genie shall not be liable for any loss (including but not limited to loss of data, profits and goodwill), liability, damages (whether direct, indirect or consequential) or expense

of whatsoever nature and howsoever arising where such loss is due to the occurrence of any of the following events:

- 14.1.1. the Customer's failure to perform, or delay in performing its obligations in terms of this Agreement; or
  - 14.1.2. circumstances that constitute an event of force majeure as contemplated in clause 29 below; or
  - 14.1.3. all telecommunications infrastructure and communication line faults; or
  - 14.1.4. failure or unreasonable delay by the Customer to report faults/problems to Marketplace Genie; or
  - 14.1.5. the failure by the Customer to adequately confirm the accuracy and integrity of any data or information processed for and on behalf of it by Marketplace Genie; or
  - 14.1.6. the failure by the Customer to adequately protect its Proprietary Information; or
  - 14.1.7. the failure of any hardware, software programme, applications/s or any other computer systems (or any component thereof) or product or service of any third party on whom the Customer relies (whether directly or indirectly) to access the System and/or use the Services and/or on which Marketplace Genie relies to grant access to the System and/or provide the Services.
- 14.2. In no event shall Marketplace Genie be liable for any incidental, consequential, or any other indirect loss or damage (including but not limited to loss of profits or revenues and loss of data), nor for exemplary or punitive damages. These limitations of liability shall apply regardless of the form of action, whether in contract, delict or otherwise and regardless of whether the Customer has been advised as to the possibility of such damages and/or losses occurring.

## 15. UNCONTROLLABLE EVENTS

- 15.1. Whilst we aim to provide uninterrupted Services, unfortunately we can't guarantee this as interruptions may be caused by factors beyond our reasonable control. Under no circumstances will we be liable for any events beyond our reasonable control. If circumstances happen that are beyond our reasonable control, we will not be liable for any failure to perform our obligations under the Agreement because of those circumstances, and we will be excused from that failure for so long as those circumstances continue. Wherever possible, we will provide advance warning on our Site of any known or planned interruptions and will try to ensure any interruption is kept as brief as possible.

## 16. YOUR INDEMNIFICATION OF MARKETPLACE GENIE

- 16.1. You hereby indemnify and hold harmless each of Marketplace Genie, its subsidiaries, affiliates, officers, directors and employees, against any and all loss, expense or damage they may suffer, or third party claims which may be made against them (including legal fees), which arise (directly or indirectly) from or in relation to (a) any breach of this Agreement (including any documents it incorporates by reference) by you, your affiliates, or any of your employees or agents; (b) any violation of any law or the rights of a third party relating to your use of the Services, by you, your affiliates, or any of your employees or agents; (c) the products and/or services offered or sold by you; and (d) the your Product Data.

## 17. INTELLECTUAL PROPERTY RIGHTS

- 17.1. All Intellectual Property Rights vested in any of the Marketplace Genie documentation or in any software and/or any other documentation and works (whether stored in printed or electronic form) furnished by Marketplace Genie to the Customer, and/or developed by or created by Marketplace Genie or any of its employees, agents, or sub-contractors in the course of or for the purpose of granting access to the System and/or providing the Services to the Customer (whether or not created by Marketplace Genie in connection with this Agreement), shall be the property of and vest solely and absolutely in Marketplace Genie on the date upon which same is created.

- 17.2. The Customer shall only be entitled to utilise the Intellectual Property Rights referred to in 11.1 above, or any portion thereof, for the purposes of the accessing and utilising the System and/or the Services in terms of this Agreement, and shall not publish, circulate or copy same for use by any third party whomsoever.
- 17.3. To the extent necessary, the Customer hereby cedes, assigns, transfers and makes over to Marketplace Genie any Intellectual Property Rights in respect of any of the software, documents and/or works referred to in 17.1.
- 17.4. You hereby grant to us, and we accept, on a non-exclusive basis, a royalty free, non-transferable (except as provided herein), world-wide and fully sub-licensable, license to (a) use, reproduce and represent the registered or unregistered trademarks, trade names and/or logos owned by or licensed to you ("Merchant Marks") for the limited purposes of enabling us to exercise our rights or to fulfil our obligations under this Agreement; (b) use, reproduce, distribute, display and transmit the Feed in connection with, across and through Marketplace Genie property and to permit users of such Marketplace Genie property to use the Feed & Product Data; (c) use, reproduce, distribute, display and transmit the Product Data in connection with the marketing and promotion of any respective Marketplace Genie property; and (d) generally to do all things with the Feed to provide the means and rights of access to the Product Data to our Users.
- 17.5. You grant us a royalty-free, perpetual, word-wide, irrevocable, non-exclusive and fully sub-licensable right and license to use, modify, adapt, reproduce, publish, translate, create derivative works from, distribute, perform and display the content of your Feed, in whole or in part. The means that we will be entitled to (inter alia) (a) organize, reproduce, display and otherwise use the content of your Feed as well as adapted and translated versions thereof (alone or in combination with other links and works) whether via the internet, via wired or wireless communication networks, simultaneously or successively and in locations and at times of our choice and to transfer such content on demand, via email, text message and other channels or media, as well as to duplicate the content for the abovementioned purposes; (b) reproduce, transmit, publicly display and/or distribute your Feed content as well as adapted and translated versions thereof via any medium; (c) develop and operate hyperlinks that permit Users to access your Merchant Site; (d) use, reproduce, organize and publicly display your Merchant Marks; (e) edit, adapt, abbreviate or translate in any languages your Feed content, to add new or altered content \ or works and to grant access to this edited content to third parties; (f) to catalogue and archive your Feed content wholly or partly in any technical form whatsoever and to transfer it into electronic databases and/or data networks and to grant third parties access to these databases; (g) exploit advertising in online and offline media, in particular to grant access to the content of your Feed to third parties and to combine it with the content of third parties and to incorporate it in print advertisements, brochures, advertisement films and advertising banners distributed by us or any authorized third party; and (h) if you authorize us to do, to automatically produce Product lists or, if the Feed contains image URLs, the right to exploit your Merchant Site with web crawlers.
- 17.6. You grant us a royalty-free, perpetual, word-wide, irrevocable, non-exclusive and fully sub-licensable right and license to track, monitor and report your clicks/referrals and related data, sales/orders and related data, and your conversion & ROI rates and related data. These may be tracked through the integration with the Marketplace Genie Platform and your Store or provided by some other electronic or printed means. These data & statistics may be used in published material in an aggregated manner so as to give general, market-related information and statistics to interested parties.

## 18. RESERVATION OF RIGHTS

- 18.1. All the content, trademarks and data on our Sites ("Content") are the property of or licensed to us and as such are protected from copying and infringement by local and international legislation and treaties. The Content may not be reproduced or copied by any means,

whether electronically or not, without our prior written permission. Note that our Sites may contain images, names, codes or other content that constitute the trademarks, logos, or copyrighted material owned by other Merchants or third parties and you may not copy or use same without their permission.

- 18.2. Any and all intellectual property rights subsisting in our Sites, any Content, the Services, this Agreement or otherwise developed by or on behalf of us subsisting now or in the future in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term ("Intellectual Property Rights"), vests in Marketplace Genie and all rights not expressly granted are reserved. You acknowledge that you have no claim of any nature in and to the Intellectual Property Rights. You will not at any time during or after termination or cancellation of this Agreement dispute the validity or enforceability of such rights, or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of any of the Intellectual Property Rights and shall not counsel or assist any other person to do so. You may not use or alter any trademarks, trade or business names, designs or logos forming part of the Intellectual Property Rights, including but not limited to trade marks incorporating the terms "Marketplace Genie" ("our Logos") or do (or fail to do) anything that could adversely affect our rights in our Logos or their value and you agree to fully reimburse us for any loss or damage that we suffer as a result of any use by you of our Logos which is not in accordance with the Agreement.
- 18.3. You may only download, view and print content from our Site for private and non-commercial purposes. To obtain permission for the commercial use of any content on our Site please contact us at <http://www.MarketplaceGenie.co.za/contact/> for assistance.
- 18.4. Except as expressly stated in this Agreement nothing in this Agreement shall grant or be deemed to grant either party any right, title or interest in any intellectual property rights of any kind (including copyright, trademarks, utility marks, domain names, trade and business names, designs and inventions) owned by the other party and except as expressly stated herein nothing in this Agreement shall entitle either party to use the other party's logos or trademarks or any other intellectual property rights in any way whatsoever without the prior written consent of the other party.

## 19. TRADEMARKS

- 19.1. The Customer shall not acquire any right, title or interest entitling it to use the name, service marks, trademarks or logos of Marketplace Genie. In this regard, the Customer undertakes in favour of Marketplace Genie not to perform any act which would injure the reputation or goodwill attaching to Marketplace Genie's name and trademarks, or which would prejudice Marketplace Genie's rights in and to such names and trademarks.

## 20. SECURITY AND PROTECTION OF PROPRIETARY INFORMATION

### **Marketplace Genie's Proprietary Information**

- 20.1. The Customer will keep in confidence and protect any Proprietary Information from disclosure to third parties and restrict its use to that which is provided for in this Agreement.
- 20.2. The Customer acknowledges that the unauthorised disclosure or use of Proprietary Information may cause substantial economic loss to Marketplace Genie. All printed materials, containing Proprietary Information will be marked with "Proprietary" or "Confidential", or in a manner which gives notice of its proprietary nature. Proprietary Information shall not be copied, in whole or in part, except when essential for correcting, generating or modifying Proprietary Information for the Customer's authorised use. Each such copy, including its storage media, will be marked with all notices, which appear on the original.
- 20.3. The Customer shall ensure that its employees comply with its obligations under this clause 20. This clause 20 shall survive termination or cancellation of this Agreement. Unless specifically otherwise agreed to, this Agreement does not transfer to the Customer any rights

contained in any Proprietary Information of Marketplace Genie. Notwithstanding the provisions of clauses 20.1 to 20.3 above, the Parties agree to observe any additional security measures that may be required from time to time, such measures shall be agreed upon in writing between the parties.

### **The Customer's Proprietary Information**

- 20.4. The Customer acknowledges and agrees that it shall at all times be solely responsible for the protection of its own Proprietary Information.
- 20.5. Your Information: When registering for and maintaining a Merchant Account, you will be required to provide certain personal and other information to us to enable us to provide the Services to you. You are solely responsible for the accuracy of the information you provide to us or other users as aforesaid ("Your Information"). We will not be liable to you in any way whatsoever for any loss, expense or damage suffered by you, or claims made by third parties against you, and you further indemnify us against any loss, expense or damage we may suffer, or claims made by third parties against us, which arise from or in relation to your having submitted inaccurate information to us.
- 20.6. Information required to validate your identity: We use many techniques to identify our Merchants when they register on our Site. You authorise us, directly or through third parties, to make any inquiries we consider necessary to validate your identity and registration. However, because user verification on the internet is difficult, we cannot and do not guarantee any Merchant's or User's identity.

## **21. COMPLIANCE WITH LAWS**

- 21.1. We cannot screen or edit all the content available from our Sites and do not accept any liability for illegal, defamatory or obscene content on or connected to our Sites, other than loss or damage arising as a result of our gross negligence in respect of screening content on our Sites. Hyperlinks provided on our Sites to other websites or mobi-sites (as the case may be) are provided as is and we do not necessarily agree with, edit or sponsor the content on such other sites. You are encouraged to inform us of any such content that may be offensive or illegal.
- 21.2. You are obliged to comply with all laws applicable to any intellectual property rights (including without limitation trade secrets, copyright, trademarks, registered designs and patents) in respect of any data, files and/or information accessed, retrieved or stored by you through your use of any of the Services.

## **22. PROHIBITED CONTENT**

- 22.1. You agree to use the Services in accordance with the terms of this Agreement and all applicable laws, regulations and ordinances. You will not use our Site, or any of the Services for any other purpose, including unlawful or fraudulent activity. If we have reason to believe that you may be engaging in or have engaged in fraudulent, unlawful or improper activity, including without limitation any violation of any terms and conditions of this Agreement, your access to the Services may be suspended or terminated, as described below.
- 22.2. In particular, you undertake not to engage in any of the following prohibited conduct in using our Site or any of the Services:
  - 22.2.1. Marketing or sale of counterfeit, stolen, or otherwise illegal items;
  - 22.2.2. threatening, stalking, defrauding, inciting, harassing, or advocating the harassment of, another person, User or Merchant, or otherwise interfering with another person's use of our Site or Services;
  - 22.2.3. submitting false, inaccurate or misleading information on the Site or conducting yourself in a false, inaccurate or misleading fashion or conducting fraudulent activities (including but not limited to impersonating a Marketplace Genie User or representative and/or requesting a Marketplace Genie User to provide you with their password or other information so as to access their account);

- 22.2.4. delivering or attempting to deliver any damaging code to the Site or attempting to gain unauthorised access to any page or database on our Site; tampering, hacking, modifying to attempt to gain unauthorised access or otherwise disrupting, disabling, corrupting, interfering with or otherwise causing harm to the security or functionality of our Site or Services, Merchant Accounts, accounts of Users, computer systems or networks connected to the Site;
  - 22.2.5. posting spam, chain letters, contests, junk email, pyramid schemes, surveys, or other mass messaging, whether commercial in nature or not;
  - 22.2.6. keyword spamming or otherwise attempting to manipulate search results;
  - 22.2.7. violating any third-party right, including any breach of confidence, copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity or any other intellectual property or proprietary right;
  - 22.2.8. being defamatory, trade libellous, unlawfully threatening or unlawfully harassing or promoting bigotry or discrimination;
  - 22.2.9. transmitting or posting profanity or illegal content, such as child pornography;
  - 22.2.10. soliciting personal information from minors or harming or threatening to cause harm to minors;
  - 22.2.11. violating the Agreement or any applicable law (including those governing financial services, consumer protection, unfair competition, anti-discrimination or false advertising);
  - 22.2.12. modifying, adapting, appropriating, reproducing, distributing, translating, creating derivative works or adaptations of, publicly displaying, selling, trading, or in any way exploiting our Site or Site content (other than Your Information), except as expressly authorised by us in the Agreement; reverse engineering any portion of our Site or Services; reformatting or framing any portion of our Site; or removing or modifying any copyright, trademark or other proprietary rights notice on our Site or on any materials printed or copied off our Site;
  - 22.2.13. recording, processing, or mining information about Merchants; accessing, retrieving or indexing our Site to construct or populate a searchable database of business listings or reviews; or using any robot, spider, site search or retrieval application, or other automated device, process or means to access, retrieve, scrape, or index our Site or any Site content;
  - 22.2.14. making excessive traffic demands; and/or taking any action (such as stress testing) that exceeds the load advised by Marketplace Genie from time to time, or that imposes, or may impose in our sole discretion an unreasonable or disproportionately large load on our technology infrastructure after having received a request from us to reduce the load and you have failed to do so;
  - 22.2.15. using our Site or Services or any Site content to transmit any computer viruses, worms, defects, trojan horses, time bombs, cancelbots, easter eggs or other computer programming routines or items of a destructive nature that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or other personal information; using any device, software or routine that interferes with the proper working of our Site or Services, or otherwise attempting to interfere with the proper working of our Site or Services;
  - 22.2.16. removing, circumventing, disabling, damaging or otherwise interfering with any security-related features of our Site, features that prevent or restrict the use or copying of Site content, or features that enforce limitations on the use of our Site;
  - 22.2.17. doing anything which may render us liable to anyone, or cause us to lose (in whole or in part) the services of our internet service providers or other suppliers after having received a request from us not to engage in such activities, or after having received a request from us to remedy such act and you have failed to do so.
- 22.3. You acknowledge that if you use our Site and/or any Services in a manner that violates the a foregoing provisions, we may incur substantial liability and/or suffer significant damages,



including (without limitation) fines and other related expenses from its payment processors and service providers and accordingly in the event of any such violation:

- 22.3.1. your Merchant Account will be subject to limitation, suspension or immediate termination, as stated in 26 below;
- 22.3.2. you will be subject to damages and other penalties, including criminal prosecution where applicable;
- 22.3.3. you will be held liable to us for any and all damages suffered by us and, without limiting the generality of the foregoing, you shall reimburse us for any and all costs, expenses, and fines levied on us by third parties such as its payment processors and/or service providers as a result of your activities.
- 22.3.4. You agree that, if either you or Marketplace Genie commence litigation or arbitration in connection with clause 22.3 above, the prevailing party is entitled to recover attorneys' fees and any other costs incurred in such proceeding on the attorney and own-client scale in addition to any other relief to which the prevailing party may be entitled.

### 23. NON-SOLICITATION

- 23.1. The Customer shall not at any time, during this Agreement, nor for a period of one (1) year after termination of this Agreement, for any reason whatsoever, either for itself or as the agent of anyone else, persuade, induce, solicit, encourage or procure any employee, agent, sub-contractor or authorised representative of Marketplace Genie to:
  - 23.1.1. become employed by or interested in any manner whatever in any business, firm, undertaking or company, directly or indirectly in competition with the business carried on by Marketplace Genie; or
  - 23.1.2. terminate his employment with Marketplace Genie.

### 24. DISPUTE RESOLUTION

- 24.1. In the event of any dispute relating to or arising out of this Agreement, including regarding the scope, effect, validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, such dispute shall be finally resolved on the terms as provided for below:
  - 24.1.1. a senior nominee of each of the Parties shall meet, or otherwise attempt to settle such dispute or difference within a period of 10 (ten) Business Days of the raising of the dispute, unless expressly agreed otherwise by both parties.
  - 24.1.2. in the event that the respective Parties' senior nominees fail to resolve the dispute or difference within such period as stated in clause 24.1.1, such dispute or difference shall be finally resolved by arbitration in accordance with the Arbitration Act 42 of 1965;
  - 24.1.3. Each Party to this Agreement expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency;
  - 24.1.4. the arbitration shall be held in Cape Town and the proceedings conducted in English; and
  - 24.1.5. the Parties shall agree on the appointment of a single arbitrator. If such appointment is not agreed to within 7 (seven) days after receipt of the written notice, either party may request that the President of the Cape Law Society, or any successor to such society, make the necessary appointment.
- 24.2. Notwithstanding anything to the contrary anywhere else in this Agreement, nothing in this clause shall preclude any party from seeking interim relief on an urgent basis in any court having jurisdiction.
- 24.3. The Parties undertake to keep the arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration, confidential.

- 24.4. The Parties agree that the written demand by a party to the dispute that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act 68 of 1969

## 25. BREACH

- 25.1. Should either Party (“Defaulting Party”) commit a breach of any of the provisions of this Agreement, then the other Party (“Aggrieved Party”) shall be obliged to give the Defaulting Party 7 (seven) days’ written notice, or such longer period as may be reasonable in the circumstances, to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled, without prejudice to its other rights in law, to –
- 25.1.1. cancel this Agreement or to claim immediate specific performance of all of the Defaulting Party’s obligations whether or not due for performance, in either event without prejudice to the Aggrieved Party’s right to claim damages.
  - 25.1.2. suspend or limit your access to the Services or your Merchant Account until such time as you have remedied your breach, at which stage we reserve the right to charge you a reconnection fee in order to re-connect you to the Services; and/or
  - 25.1.3. terminate the Services (and your access to your Merchant Account) entirely, depending on the nature of the breach in question ; and/or
  - 25.1.4. forthwith claim immediate payment of any and all outstanding amounts due by you to us; and/or
  - 25.1.5. list you with any of the credit bureaus; and/or
  - 25.1.6. appoint tracing agents as may be required; and/or
  - 25.1.7. if we are in possession of any of your property in consequence of our provision to you of the Services, we shall be entitled to retain such property pending your settlement of all amounts owed by you to us, and furthermore, if you fail to pay all amounts then owed to us within 30 (thirty) days of any notice to you in such regard, we are further entitled, to dispose of such property in order to defray any expenses incurred by us and any amounts owed by you to us,
  - 25.1.8. and in all the above instances, we are entitled to retain all Fees already paid by you and recover all of our costs associated with your breach, including without limitation, default administration charges, collection costs, legal costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction of such judgement or in regards to the enforcement of the Agreement.

## 26. SUSPENSION & TERMINATION

### **Suspension:**

- 26.1. In addition to suspension for actual un-remedied breaches (as contemplated above), we reserve the right to suspend your access to the Services and/or your Merchant Account in the following circumstances:
- 26.1.1. upon your having committed a breach, pending your remedy thereof;
  - 26.1.2. should we reasonably suspect that any of the content of your Feed (be it Product details or pricing or otherwise) or other information you submit to us is not authentic and/or accurate;
  - 26.1.3. should we reasonably suspect that you have committed any other breach of this Agreement;
  - 26.1.4. should negative User reviews be posted in relation to you or your Products;
  - 26.1.5. should we receive complaints from third parties in respect of your business practices (it being recorded that we are not obliged to verify the foundation for any such complaints prior to suspending your access to Services).
- 26.2. Notwithstanding any other provision of this Agreement, on termination of this Agreement for any reason whatsoever, and in any event, on demand by Marketplace Genie:

- 26.2.1. any amounts due to Marketplace Genie shall immediately become payable to Marketplace Genie and the Customer shall forthwith make payment of same to Marketplace Genie by not later than seven (7) days from the date of termination of this Agreement.
- 26.2.2. Consequences of Termination: Where you are in possession of any of our property in consequence of the provision to you of the Service, upon termination of this Agreement for any reason whatsoever, you will immediately return such property to us, and shall not be entitled to retain such property for any reason whatsoever. In particular, but without limiting the generality of the foregoing, you will remove any reference to Marketplace Genie, our Logos, the Content and the Services from all your promotional and corporate materials, including all your electronic communications and websites.

## 27. DISCLAIMER

- 27.1. Although we use reasonable care and diligence to ensure that the Services are available, accurate, complete, correct, error-free, secure, up-to-date and/or reliable, we make no representations or warranties, implied or otherwise, that, amongst others, the Services, the content and technology available from our Sites or information provided by us via email or other means will be available, timely, accurate, complete, correct, error-free, virus-free, secure, 100% uninterrupted, up-to-date and/or reliable.
- 27.2. You therefore agree that the Services and our Sites are supplied "as is" and "as available", have not been compiled or supplied to meet your individual requirements and are used at your own discretion and risk. It is your sole responsibility to satisfy yourself prior to accepting this Agreement that the Services will meet your individual requirements and be compatible with your hardware and/or software.
- 27.3. More specifically:
  - 27.3.1. although we will use reasonable endeavours to ensure the security of the Services and our e-commerce network infrastructure, we cannot guarantee such security and we will not be liable in any way whatsoever in respect of any loss or damage of whatever nature suffered by you or any third party due to a breach of such security of the Services and/or our e-commerce network infrastructure other than where due to our gross negligence;
  - 27.3.2. hyperlinks provided on our Site to non-Marketplace Genie websites or mobi-sites are provided as is and we do not necessarily agree with, edit or sponsor the content on such sites; and
  - 27.3.3. we make no warranties or guarantees regarding the success or increased Product sales you may achieve from subscribing to the Services, including no warranty that any User will click through to your Merchant Site and/or purchase any Products from you.
  - 27.3.4. Marketplace Genie is not liable for any billing issues that arise from improper bid management, improper pricing, or disputes with the Channels. You are responsible for previewing your feeds prior to submitting them to the Channels and managing your advertisement bids and/or pricing.
  - 27.3.5. Nothing in this Agreement will prevent or limit either of your or our liability for fraud or wilful misconduct; death or personal injury arising out of negligence; or gross negligence.
  - 27.3.6. You acknowledge that the allocation of risk and responsibility as set out in the Agreement is reasonable because it accords with our not having developed any of the Services specifically for you; the fact that, while we follow good industry practice, it is not economically possible for us to exhaustively test any software that supports the Services; and the amount of fees, if any, paid by you for the Services.

## 28. COMPLAINTS, ERROR REPORTING & DISPUTES

- 28.1. Should you have any complaints relating to the Services, our Site, or any other Merchants or Users, or wish to report possible malfunctions and errors, please contact our Customer Relations at <http://www.MarketplaceGenie.co.za/contact>. We will take all such measures as we deem reasonable or necessary to assess and address your complaint.
- 28.2. Should a dispute of any nature whatsoever arise between you and Marketplace Genie on any matter provided for in or arising out of the Agreement and such dispute is not resolved through our Customer Relations Department then, save for urgent or interim relief which may be granted by a competent court, such a dispute may be submitted to confidential arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa. Arbitration proceedings shall be conducted in Cape Town in English. The expedited arbitration rules may be downloaded from [http://www.arbitration.co.za/downloads/expedited\\_rules](http://www.arbitration.co.za/downloads/expedited_rules).
- 28.3. Should a dispute of any nature whatsoever arise between you and another Merchant or User, you acknowledge that we are not and will not be a party to such dispute. We do not act as the agent of any of our Merchants or Users and are not responsible for resolving such disputes. We may however in its sole discretion elect (but shall not be obliged) to assist in the resolution of such dispute.

## 29. FORCE MAJEURE

- 29.1. Should a Party ("Affected Party") be prevented from fulfilling any of its obligations in terms of this Agreement as a result of an event of force majeure, then:
  - 29.1.1. those obligations shall be deemed to have been suspended to the extent that and for so long as the Affected Party is so prevented from fulfilling them and the corresponding obligations of The other Party ("Unaffected Party") shall be suspended to the corresponding extent;
  - 29.1.2. the Affected Party shall promptly notify the Unaffected Party in writing of such event of force majeure and such notice shall include an estimation of the approximate period for which the suspension in terms of clause 29.1.1 will endure. Such estimate shall not be binding on the Affected Party; and
  - 29.1.3. the duration of this Agreement as well as each period within which and each date by which any obligation is required to be performed in terms of this Agreement shall be extended or postponed, as the case may be, by the period of suspension in terms of clause 29.1.1.
- 29.2. Should the Affected Party partially or completely cease to be prevented from fulfilling its obligations by the event of force majeure, the Affected Party shall immediately give written notice to the Unaffected Party of such cessation and the Affected Party shall, as soon as possible, fulfil its obligations which were previously suspended; provided that in the event and to the extent that fulfilment is no longer possible or the other Party has given written notice that it no longer requires such fulfilment, the Affected Party shall not be obliged to fulfil its suspended obligations and the Unaffected Party shall not be obliged to fulfil its corresponding obligations.
- 29.3. Should an event of force majeure continue for more than 180 (one hundred and eighty) days after the date of the notice referred to in clause 29.1.2 and notice of cessation in terms of clause 18.2 not have been given, then the Unaffected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than 30 (thirty) days' written notice to the Affected Party to that effect, provided that any such notice of termination shall be deemed not to have been given if a notice of cessation in terms of clause 29.2 is received by the Unaffected Party prior to the expiry of such 30 (thirty) day period.
- 29.4. An "event of force majeure" shall mean any event or circumstance whatsoever which is not within the reasonable control of the Affected Party, including vis major, casus fortuitus, any act of God, strike, theft, fire, explosion, riot, insurrection or other civil disorder, war (whether declared or not) or military operations, international restrictions, any requirement of any

international authority, any requirement of any government or other competent local authority, any court order, export control and shortage of transport facilities

### 30. CESSION AND ASSIGNMENT

- 30.1. The Customer shall not be entitled to cede, assign or transfer all or any of its rights and/or obligations in terms of this Agreement, without the prior written consent of Marketplace Genie, which consent will not be unreasonably withheld.

### 31. SEVERABILITY

- 31.1. If any provision hereof is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be pro non scripto, but without affecting, impairing or invalidation any of the remaining provisions of this Agreement which shall continue to be of full force and effect.

### 32. GENERAL

- 32.1. This Agreement will be governed and construed in accordance with the laws of South Africa. The provisions of the following Acts, as well as any other applicable legislation not specifically mentioned, are applicable to this Agreement and this Agreement is to be read as though the provisions of same are specifically incorporated herein
- 32.1.1. The Consumer Protection Act;
  - 32.1.2. The Electronic Communications and Transactions Act;
  - 32.1.3. The Promotion of Access to Information Act; and
  - 32.1.4. The Protection of Personal Information Act;
- 32.2. This Agreement constitutes the sole record of the agreement between the Parties in regard to the subject matter thereof.
- 32.3. Neither Party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded herein or reduced to writing and signed by the Parties or their representatives.
- 32.4. No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 32.5. No indulgence which either Party may grant to the other shall constitute a waiver of any of the rights of the grantor, unless reduced to writing and signed by both Parties.
- 32.6. The Customer hereby warrants that it has the capacity to and is authorised to conclude this Agreement, and that upon acceptance this Agreement will, and will continue to, bind it in all respects.
- 32.7. Additional requirements in terms of the Electronic Communications and Transactions Act ("ECTA")
- 32.8. The following information is provided in terms of section 43(1) of ECTA:

Full name and legal status of website owner:

Marketplace Genie (Pty) Ltd

Street Address: Unit 8 Pelican Park, Montague Drive, Montague Gardens, 7441

Postal address: PO BOX 394, Sea Point, Cape Town, South Africa.

Official email address of the Website: [info@marketplacegenie.co.za](mailto:info@marketplacegenie.co.za)

The seven (7) day cooling off period required by section 44 of ECTA is provided for and included in the Trial.